IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 796 of 2001

VAGA RAM & ANR
V/S
B.O.R. & ORS

Mr. PRADEEP SHAH, for the appellant / petitioner

Mr. KC SAMDARIYA, for the respondent

Date of Order : 8.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

Vide order dated 27.2.2001, notice for final hearing was issued, and since parties effected are present, the matter has been finally heard at this stage.

By impugned order dated 16.1.2001, the Board of Revenue set aside the order of Asstt. Collector, Sirohi dated 24.11.2000 at admission stage, and even without giving any opportunity of hearing to the present petitioner, and by observing that Board does not feel it necessary to hear the opposite party.

It is contended by learned counsel for the petitioner that order of Board of Revenue, to say the least, is in flagrant violation of principles of natural justice, inasmuch as, the order of the trial court was sought to be set aside, simply because the Board was of the view that the order is not sustainable, that does not entitle the Board to pass the order without even hearing the other party, who is to be adversely effected by such order.

This part of the contention was not seriously opposed by learned counsel for the respondent, as on facts, it is not in dispute that petitioner was not given opportunity of hearing. However, learned counsel for respondent has contended that, all said and done, since the order of trial court is ex-facie bad, this court need not interfere in the writ jurisdiction, even if the order of Board of Revenue is passed, without affording opportunity of hearing to the petitioner.

I have heard learned counsel for the parties on the merits of the case, and have also perused the order of learned trial court.

By the impugned order dated 24.11.2000 , the learned trial court has directed the document in question, to be admitted in evidence, negativating the contention of inadmissibility in evidence on the anvil of documents being unregistered.

The learned trial court has reproduced the exact contents of document in inverted commas, and has construed the document, to be only tentamounting the agreement to sale, and has found that it being an agreement to sale, which could be admitted in evidence despite not being registered.

The learned Board of Revenue, on the other hand, has proceeded on the basis that, the petitioner had filed suit under Sec. 88 of the Rajasthan Tenancy Act, and has proceeded to hold that agreement being unregistered and on plain paper, has no evidentiary value, and that question of agreement, would be decided by the civil court. On this basis only, the order of trial court has been set aside, and the trial court has been directed not to exhibit the document and proceed with the case.

In my view, apart from the fact that reasoning given by Board of Revenue , is wholly sustainable, inasmuch as, on the plain reading of document, as reproduced by learned trial court, it clearly tentamounts to be a document being the agreement to sale, and being of the year 1988, it was not required to be registered, and that being the only objection raised on the side of defendants, the document could not be denied to be admitted in evidence, the learned Board of Revenue had no occasion to embark upon the evidentiary value of document in the present suit, as all these points are yet to be decided by the learned trial court.

Apart from above, this approach of the learned Board of Revenue in accepting the revision at admission state, without hearing other party, is thoroughly disgusting, and is required to be seriously deprecated. The principle of natural justice is the first requirement, and the Board of Revenue being the highest authority in the hierarchy of the revenue courts, is not expected to conduct in this manner, which is in flagrant violation of principles of natural justice. The highest courts are expected to set good trend for its subordinate courts, and are not expected to act in such an arbitrary manner.

In these circumstances, I am constraint to allow the writ petition, and set aside the impugned order Annex.2, and to restore the order of trial court being Annex.1. The learned trial court is directed to expeditiously decide the main suit on merits in accordance with law.

(N P GUPTA),J.

/Srawat/